

**OPINION
49-156**

April 14, 1949 (OPINION)

OFFICERS

RE: State Senator Ineligible for Appointment on Highway Patrol

Your letter of April 14 to the Attorney General relative to the appointment of Frank C. Albers of Center, North Dakota, as a member of the Highway Patrol, has been received.

I understand that Mr. Albers is now a member of the State Legislature and that his term will not expire until 1951. I also understand that the salaries of the Highway Patrol were raised by the last legislative session.

It is our opinion that the office of highway patrol, under our statute, Chapter 39-03 of the 1943 Revised Code, is a civil office of the state. Therefore, it is our further opinion that by virtue of section 39 of the Constitution which prohibits a member of the Legislature from holding during the term for which he was elected any civil office in the state which was created by the legislature of which he was a member, or the salary of which was increased during his term of office. Therefore, it is our opinion that Mr. Albers cannot be appointed a state patrolman.

The same question came up with reference to Mr. Albers' right to hold the office of county treasurer in his home county and this office submitted an opinion to the state's attorney of Oliver County on that question on March 29th. We are enclosing a copy of that opinion herewith.

WALLACE E. WARNER

Attorney General